Supreme Court, U.S.
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No. 00-0320

IN THE

Supreme Court of the United States

JAMES S. SMITH AND BARBARA SMITH,

Petitioners,

v.

THE CITY OF CUMMING, A MUNICIPAL CORPORATION, EARL SINGLETARY AND JOHN DOE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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REASONS FOR DENYING THE WRIT

Petitioners have presented two issues in their petition. One is whether their First Amendment rights were violated by Respondents when a magistrate judge, not the Respondents, ordered petitioners to stop videotaping police activities. The second issue is unclear and somewhat reminiscent of Petitioners shotgun pleading style criticized by the District Court. However, it seems to relate to alleged attempts to revoke Petitioners' business license. This issue was not addressed by the Eleventh Circuit and therefore will not be addressed here. Moreover, both of these issues are fact-intensive issues, Petitioners alleging that facts exist to support their theory and both the District Court and the Eleventh Circuit finding that there is no evidence in the record to support Petitioners' allegations. Thus, Petitioners have not raised any legal issues to be decided by this Court. For this reason alone, the petition should be denied. *See* Rule 10 of the Supreme Court of the United States.

The gravamen of the petition is based on a faulty premise. Petitioners argue that the Eleventh Circuit issued an opinion "holding that the Petitioners' First Amendment Rights were violated but affirming the lower court's granting of summary judgment to Respondents, *finding that Petitioners had suffered no damages*." Petition, p. 2 (emphasis added). This is incorrect. The Eleventh Circuit *never* held that Petitioners' First Amendment Rights had been violated, and it never addressed whether Petitioners suffered any damages. Rather, the Eleventh Circuit held that Petitioners had a right to videotape police activities, but "they [Petitioners] have not

shown that the Defendants' actions violated that right." App. to Petition, p. 4.

The foundation of the Eleventh Circuit's decision was based on the fact that none of the Respondents were responsible for the alleged infringement of Petitioners' First Amendment rights. The magistrate judge, and not the Respondents, issued an order prohibiting Petitioners from continuing their videotaping activity. This was an act of a judicial officer with no connection to the Respondents. If Petitioners did not agree with this order, then there were judicial avenues of appeal they could have pursued. Instead, they filed the instant lawsuit.

Petitioners attempt to characterize their videotaping of police officers as harmless, nonintrusive conduct. However, Chief Singletary testified that he applied for a warrant for obstruction of law enforcement because of concern by him and his officers as to what Mr. Smith was doing. Chief Singletary testified:

> They [police officers] were concerned for their physical safety because they didn't know the motivation of Mr. Smith.

Singletary Depo., p. 24

> He [Mr. Smith] was close enough to interfere with the officers, that they felt very uncomfortable with him being there.

Singletary Depo., p. 26.

> They [police officers] were constantly having to look over their shoulder to see where Mr. Smith was at, what Mr. Smith was doing. One officer on the street in the evening or at night by himself with a person that's been following you around, stalking you, becomes very uncomfortable when you don't know what his intentions are.
>
> . . .
>
> If the officer is put in that kind of position, when he doesn't know why the individual is there, then it makes the officer very nervous. It would make me very nervous, not knowing what Mr. Smith's intentions were.

Singletary Depo., p. 27.

Chief Singletary did not arrest or even detain Petitioners. Rather, the undisputed evidence shows that Chief Singletary applied for a warrant in order to obtain a judicial ruling on the propriety of Respondents' conduct in videotaping police officers. (Singletary Depo., pp. 20, 25). The magistrate

judge, not Respondents, told Mr. Smith that if he continued to videotape officers while on duty he would be arrested. (J. Smith Depo., pp. 38-39; B. Smith Depo., p. 248).

Petitioners argue that that the magistrate judge's decision was obtained through a "false affidavit" submitted by one of the Respondents. Such an affidavit is not in the record and does not exist as far as Respondents can determine. This issue was raised by the Eleventh Circuit during oral argument and Petitioners' counsel could not direct the Court to any place in the record where such an affidavit exists. To the contrary, as the district court found, the record shows that "Chief Singletary only requested the hearing before the magistrate judge because he believed the police officers for whom he was responsible were obstructed from the perform of their duties in accordance with [O.C.G.A.] section 16-10-24 – a statute that contemplates the limitation of some speech in order to effectuate its purpose." App. to Pet., p. 29. Absent Petitioners unsupported allegations, there is no evidence that Respondents did anything surreptitious or illegal in scheduling the hearing before the magistrate judge. Therefore, as the Eleventh Circuit properly held, there has been no showing that the Respondents violated Petitioners' First Amendment Rights.

CONCLUSION

The petition should be denied because Petitioners have not shown that the Eleventh Circuits decision conflicts with any other federal or state court decision, nor have they shown that the Eleventh Circuit otherwise committed error.

Respectfully submitted,

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